

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7219 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA sd/-

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1. Whether Reporters of Local Papers may be allowed  
to see the judgements? No

2. To be referred to the Reporter or not? No @@o  
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3. Whether Their Lordships wish to see the fair copy  
of the judgement? No

4. Whether this case involves a substantial question  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge?  
No

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NASIRKHAN KHUDADADKHAN PATHAN

Versus

COMMISSIONER OF POLICE  
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Appearance:

MS DR KACHHAVAH for Petitioner

Ms.Siddhi Talati, A.G.P. for Respondent No. 1, 2, 3

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CORAM : MR.JUSTICE D.C.SRIVASTAVA  
Date of decision: 24/12/98

ORAL JUDGEMENT

1. In this writ petition under Article 226 of the Constitution of India, order dated 10.6.1998 (Annexure : A) passed by the Commissioner of Police, Ahmedabad, under Section 3(2) of the Prevention of Anti-social Activities Act (for short "PASA") is under challenge. The prayer is that the aforesaid order be quashed and the petitioner be released from illegal detention.

2. The detaining Authority aforesaid considering four cases registered against the petitioner under the Bombay Prohibition Act in the year 1997 and further considering two statements of two confidential witnesses, reached subjective satisfaction that the petitioner is a bootlegger and his activities were prejudicial for maintenance of public order. Accordingly the impugned order was passed.

3. This order is under challenge only on one ground that the activities of the petitioner did not amount to activities prejudicial for maintenance of public order. It, therefore, implies that the subjective satisfaction of the detaining authority that the petitioner is a bootlegger is not questioned in this writ petition. Moreover on all the four occasions foreign liquor was recovered from the petitioner on account of which four cases were registered. The petitioner is thus "bootlegger" within the meaning of Section 2(b) of the PASA.

4. Coming to the next question, viz. whether the activities were prejudicial for maintenance of public order four registered cases are of no assistance because there is no indication in the grounds of detention that at the time of search, seizure, etc. the petitioner caused any obstruction to the raiding party or created situation adverse to the maintenance of public order. Thus, from these cases no inference can be drawn that the activities of the petitioner in dealing with foreign liquor were prejudicial for maintenance of public order.

5. Coming to the two incidents narrated by the confidential witnesses only inference is that when the first witness refused to store liquore in his house on

the request of the petitioner that he was beaten and threat was extended to him by showing the knife. Knife was also shown to the persons who collected at the spot. This cannot be said to be a situation prejudicial for maintenance of public order. This situation could not have travelled beyond situation prejudicial for maintenance of law and order.

6. Likewise the second incident of 25.5.1998 is also not situation or incident which was adverse to maintenance of public order. If the witness was beaten by the petitioner and knife was shown to him in similar fashion so also the persons who collected at the spot were chased on the point of knife it can hardly be appreciated that the situation adverse to maintenance of public order or situation prejudicial for maintenance of public order was created. In M.J.Shaikh v/s. M.M.Mehta, reported in 1995 (2) G.L.R. 1268 where the petitioner had beaten the witnesses and chased the witnesses and members of public showing revolver to them, the Apex Court did not consider the incident which had disturbed the public order or even tempo of the locality. Consequently applying that verdict to the fact of this case it can be said that the activities of the petitioner were not prejudicial for maintenance of public order. Hence the impugned order of detention is rendered illegal and it cannot be sustained.

7. The writ petition, therefore, succeeds and is hereby allowed. The detention order dated 10.6.1998 (Annexure : A) is hereby quashed. The petitioner shall be released from custody forthwith unless he is wanted in some other case.

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( D. C. Srivastava, J.)

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